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HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION No. 1440 of 1999

PETITIONER : Chandra Vijay Jain, aged about 29 years, S/o Late Shri Pukhraj Jain, Resident of Pandaria, District Kawardha (C.G.)

VERSUS

RESPONDENTS :
1. Collector, Kawardha, District Kawardha (M.P.)
2. Nagar Panchayat, Pandaria through Mukhya, Nagar Panchayat Adhikari, Tahsil Pandaria, District Kawardha.
3. State of Madhya Pradesh through Secretary, Panchayat & Social Welfare Department, Government of Madhya Pradesh, Bhopal.
4. Deputy Director of Education, Bilaspur.
5. Firoja Kureshi S/o Amir Muhammed resident of Pandaria District kawardha (M.P.)

Present: Shri Vinay Pandey, Advocate for the petitioner.
Smt. Anju Ahuja, Deputy Govt. Advocate for the State / respondent no. 1 and 4.
Shri B.D.Guru, Advocate for respondent no. 2.
Shri Santosh Bharat, Advocate for respondent no. 5.

ORDER
(Passed on 28th March, 2007)

1. By this petition, the petitioner seeks an appropriate writ or direction to quash the order dated 18.02.1999 (Annexure 'A') passed by the Collector, Kawardha, in case No. 6-B/121/1998-99 whereunder the appointment of respondent no. 5 as Shiksha Karmi Grade II in Math

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subject against the post of science was held as valid and in accordance with the provisions of law and as per advertisement. The petitioner further impugnes the select list dated 18.08.1998, decision dated 17.09.1998 and the proceedings dated 04.09.1998 (Annexure 'P').

2. The indisputable facts in nutshell are that the petitioner alongwith others, pursuant to advertisement dated 28.7.1998 (Annexure D) applied for appointment on the post of Shiksha Karmi Grade II in Science subject. The respondent no. 5, who had obtained first division in Maths and Science subject in Higher Secondary School Certificate and Graduation in Mathematics, was selected and appointed in mathematics subject. The petitioner challenges the selection of respondent no. 5 on the ground that the respondent no. 5 is a Mathematics graduate and he could not have been appointed against the vacancy of science subject in Shiksha Karmi Grade II. The petitioner had applied for appointment in science subject and was better qualified.

3. Being aggrieved, the petitioner filed an appeal before the Collector, Kawardha. The Collector, Kawardha, by order dated 18.02.99 (Annexure A) passed the following order.

" मैने नगर पंचायत के रिकार्ड तथा उभय पक्षकारों द्वारा प्रस्तुत तर्को एवं सबूतों को देखने पर यह पाया कि वास्तव में संबंधित शाला में गणित विषय के अध्यापक की जरूरत थी और विज्ञान विषय में गणित शामिल है । श्री चन्द्र विजय जैन ने हायर सेकेन्डरी स्कूल परीक्षा भले ही विज्ञान विषय लेकर पास की हैं किन्तु उनका विषय गणित नहीं रहा है । ये द्वितीय श्रेणी में हायर सेकेन्डरी परीक्षा पास हुए है, इसके विपरित फिरोज मोहम्मद प्रथम श्रेणी से गणित एवं साईन्स विषय लेकर बोर्ड से हायर सेकेन्डरी परीक्षा उत्तीर्ण है तथा स्नातक विषय भी गणित विषय से पास है । इसप्रकार अपीलार्थी का यह तर्क स्वीकार करने योग्य नहीं है कि नगर पंचायत द्वारा जारी विज्ञापन में गणित विषय के अध्यापक की भर्ती नहीं होनी है, बल्कि प्राचार्य द्वारा गणित विषय के अध्यापक की मांग की थी इसलिए गणित अध्यापक के रूप में फिरोज मोहम्मद का चयन विधि अनुकूल है । इसमें नगर पंचायत के द्वारा कोई त्रुटि अथवा अनियमितता किया जाना नहीं पाया जाता है, फलस्वरूप नगर पंचायत के संकल्प अथवा आदेश में किसी हस्तक्षेप की आवश्यकता प्रतीत नहीं होती। अपील आधारहीन होने के कारण निरस्त की जाती है ।"

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4. This petition, impugnes the select list as well as the order dated 18.02.99 (Annexure A) passed by the Collector, Kawardha on the ground that the petitioner is entitled to be appointed as Shiksha Karmi Grade II in science subject when the advertisement was made for science, not for mathematics. Science and mathematics are different subjects and are not interchangeable.

5. Having heard the learned counsel appearing for the parties and perused the records appended thereto, it is evident that Mathematics is a part of science and since Shiksha Karmi Grade II in Mathematics was required, the post advertised for science was filled up by Shiksha Karmi Grade II, in Mathematics.

6. It is neither contrary to the provisions of law nor in consistence with the provisions of the advertisement as Mathematics is a part of science subject. The order of the Collector is valid, just and proper. It is not warranted to interfere with the order passed by the Collector, which is unexceptionable, in exercise of extraordinary discretionary jurisdiction of this Court under Article 226/227 of the Constitution of India.

7. Thus, this petition is accordingly dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Amit